

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION, et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 24, 2008

11:01 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1  
2 HEARING re the Official Committee of Unsecured Creditors'  
3 Application for Interim and Final Orders Under §§ 328 and 1103  
4 of the Bankruptcy Code and Bankruptcy Rule 2014 Approving  
5 Retention of Moelis & Company LLC as Co-Investment Banker to  
6 the Committee Nunc Pro Tunc to July 1, 2008

7  
8 HEARING re Debtors' Thirty-First Omnibus Objection Pursuant to  
9 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 3007 to (a) Untimely  
10 Equity Claim; (b) Books and Records Claim that is Subject to  
11 Prior Order; (c) Untimely Books and Records Claims; (d) Books  
12 and Records Tax Claim that is Subject to Prior Order; (e)  
13 Untimely Claims; and (f) Modified Claims Asserting Reclamation  
14 that are Subject to Prior Orders

15  
16 Hearing Re Expedited Motion for Orders Under 11 U.S.C. §§ 363,  
17 365, 1123, and 1146 and Fed. R. Bankr. P. 2002, 6004, 6006, and  
18 9014 (A) (i) Approving Bidding Procedures; (ii) Granting  
19 Certain Bid Protections; (iii) Approving Form and Manner of  
20 Sale Notices; and (iv) Setting Sale Hearing Date and (B)  
21 Authorizing and Approving (i) Sale of Debtors' Assets  
22 Comprising Debtors' Exhaust Emissions Business Free and Clear  
23 of Liens, Claims, and Encumbrances; (ii) Assumption and  
24 Assignment of Certain Executory Contracts and Unexpired Leases,  
25 and (iii) Assumption of Certain Liabilities

1  
2 HEARING re Expedited Motion for Order Authorizing Debtors to  
3 Enter Into (i) Second Amendment to Arrangement with General  
4 Motors Corporation Approved Pursuant to Second DIP Extension  
5 Order and (ii) Partial Temporary Accelerated Pay

6  
7 Hearing Re Expedited Motion for Order (i) Supplementing January  
8 5, 2007 Dip Refinancing Order (Docket No. 6461) and Authorizing  
9 Debtors to Enter Into and Implement Accommodation Agreement  
10 with Agent and Participating Lenders and (ii) Authorizing  
11 Debtors to (A) Enter Into Related Documents and (B) Pay Fees in  
12 Connection Therewith

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25 Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, Al Hogan and Kayalyn Marafioti here from Skadden on behalf of Delphi Corporation for its thirty-seventh omnibus hearing. Your Honor, this morning's agenda has five matters on it. With the Court's permission, I'd like to address matters 4 and 5 first.

THE COURT: Okay.

MR. BUTLER: Your Honor, earlier this morning, there were separate chambers conferences between the interested parties in the court on matters number 4, the GM arrangement second amendment agreement approval motion, filed at docket number 14409, and the accommodation motion at docket number 14408. The GM arrangement second amendment agreement approval motion is not contested. There have been a series of objections filed to the accommodation motion. And today is the date and time scheduled for the contested hearing on that matter.

Over the course of the weekend, there have been discussions between the interested parties including discussions between General Motors and Delphi Corporation. And based on those discussions in connection with GM providing the 600 million dollars worth of additional liquidity to the estate under the terms of the GM arrangement second amendment

1 agreement approval motion, GM has requested, and Delphi has  
2 agreed, that we will continue review with our DIP lenders the  
3 terms and conditions of the proposed accommodation motion  
4 including reviewing certain amendments that have been made  
5 since the November 7th original filing. There are meetings  
6 scheduled to conduct those discussions this week. And the lead  
7 arranger has, on the bank Interlink system, extended the  
8 consent date for pages under the accommodation motion to  
9 Wednesday at 5:00. The company -- well, the company had --

10 THE COURT: So Wednesday this week?

11 MR. BUTLER: This Wednesday this week, Your Honor.  
12 Two days from now at 5 p.m. Eastern time. While the company  
13 had obtained the vote of the required lenders who's prepared to  
14 proceed today, it is extremely important to the company that we  
15 proceed to the extent that we can on a consensual manner and  
16 that we obtain the liquidity under the GM agreement. So for  
17 that reason, we have asked the Court and contacted chambers --  
18 we've asked the Court to consider adjourning these two matters  
19 through the balance of the Thanksgiving weekend to give us an  
20 opportunity to complete these discussions and to be back here,  
21 if it's acceptable to the Court, at 10:00 on December 1st.

22 THE COURT: Okay. I have the time on December 1st so  
23 I'll adjourn the two motions until 10 on that date. It's  
24 perfectly fine for the parties to try to reach agreements based  
25 on their respective rights and remedies. So I encourage you

1 all to do that.

2 MR. BUTLER: Thank you, Your Honor. So, I'll pause  
3 just for a couple of minutes, with the Court's permission, if  
4 it's all right, and just give anyone who would like to leave  
5 the courtroom before going to the balance of the agenda the  
6 opportunity to do so, if that's all right.

7 THE COURT: Okay.

8 (Pause)

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor, proceeding with the other  
11 three matters on the agenda, the first of them is the Moelis  
12 retention at docket number 14126 presented by the creditors'  
13 committee.

14 MR. RIELA: Good morning, Your Honor. Michael Riela  
15 of Latham & Watkins on behalf of the committee. I stand before  
16 this Court on the final hearing on the committee's motion, or  
17 application, to retain Moelis & Company as co-investment banker  
18 nunc pro tunc to July 1st, 2008.

19 As this Court may recall, an interim order was  
20 entered approving this application on September the 25th. That  
21 interim order was placed on the docket as well as on the  
22 delphidocket.com website. No objections have been filed to  
23 that application. The objections were due on November the  
24 14th.

25 Jeffries & Company, the currently retained financial

1 advisor to the committee, will continue to be retained by the  
2 committee in this case but there was going to be a sharing of  
3 the fees as set forth in the Moelis retention application as  
4 well the engagement letter.

5 In the interest of saving time here, I don't have  
6 anything more to add unless Your Honor has any questions.

7 THE COURT: No. As I -- we talked about this  
8 earlier. There's no net increase in the fees here.

9 MR. RIELA: That's correct.

10 THE COURT: It's just an allocation as between Moelis  
11 and Jeffries to accommodate the fact that a couple of the more  
12 senior people are at Moelis now.

13 MR. RIELA: That is correct, Your Honor.

14 THE COURT: Okay. Given that and given there are no  
15 objections, I'll approve the modification and retention of  
16 Moelis on a final basis.

17 MR. RIELA: Thank you, Your Honor. And may I  
18 approach with the order?

19 THE COURT: Yes.

20 MR. RIELA: Thank you.

21 MR. BUTLER: Your Honor, the next matter on the  
22 agenda is matter number 2, is the debtors' thirty-first omnibus  
23 claims objection at docket number 14349. There were eleven  
24 proofs of claim on the objection as it was filed. The debtors  
25 are withdrawing from that objection one claim objection and

1 that is with respect to proof of claim number 16797 filed by  
2 William M. Jenkins. That leaves ten proofs of claim that are  
3 the subject to the objection asserting approximately 2.8  
4 million dollars in claims plus unliquidated amounts. No  
5 responses were received from any party even though we provided  
6 the customary particularized notice that is usual in these  
7 cases with respect to these matters.

8 As a result, Your Honor, the relief we're seeking  
9 today on an uncontested basis covers the ten claims asserting  
10 liquidated claims, as I indicated, of about 2.6 million. We're  
11 seeking to expunge seven of those claims with an asserted  
12 amount of about 441,000 dollars. And with respect to the three  
13 remaining claims that assert 2.2 million, we are seeking to  
14 modify those claims downward by about 400,000 dollars to a  
15 total of 1.8 million dollars.

16 This otherwise -- this motion is presented in the  
17 same routine manner as the others before it.

18 THE COURT: Okay. And the one that was withdrawn, is  
19 that going into the contested category or is that just resolved  
20 at this point?

21 MR. BUTLER: Your Honor, I think at this point -- I  
22 don't have the information on whether they resolved it or not.

23 THE COURT: All right.

24 MR. BUTLER: The claims team just indicated to me  
25 that they weren't --

1 THE COURT: It's just not covered by this order at  
2 this point?

3 MR. BUTLER: Not covered by this order at this point.

4 THE COURT: Okay. All right. Well, given the  
5 uncontested relief that's sought after individualized notice  
6 and the averments in the objection, I'll grant the omnibus  
7 objection as modified on the record.

8 MR. BUTLER: Thank you, Your Honor. Your Honor, the  
9 last matter on the agenda is the exhaust business sale motion  
10 at docket number 14443. There was a response filed by the  
11 creditors' committee at docket number 14465 which is not an  
12 objection to the relief today but simply putting the Court and  
13 other interested parties on notice that the creditors'  
14 committee continues to do due diligence about the  
15 appropriateness of the value being received under the terms of  
16 the motion which will come up at the final sale hearing and  
17 reserving their rights in that regard. In the world in which  
18 we currently live, the amounts being paid for divestitures  
19 continues to be reduced in terms of multiples and other  
20 matters. And as the committee quite properly notes in their  
21 objection, this is at approximately a multiple of one in terms  
22 of the value which is less than we have been able to accomplish  
23 in some of the other sales although I would just note that for  
24 many of the sales we've had in these cases, there has been  
25 really a de minimis amount of actual cash that's come back to

1 the company after satisfying the claims and supply agreements  
2 and union requirements and all the other matters that have had  
3 to be addressed.

4 But nonetheless, this is a proposed sale to a buyer  
5 by the name of Bienes Turgon S.A. de C.V. It is for a purchase  
6 price of seventeen million dollars subject to certain working  
7 capital adjustments. There is an allocation of only 150,000  
8 dollars to the selling debtor entities. The balance of it is  
9 allocated outside of that property -- or, excuse me, of those  
10 entities. There is an expense reimbursement which is capped at  
11 600,000 dollars and we have set up the usual two-step process  
12 here to go out and establish a bid deadline here which is  
13 proposed to be December 8th, 2008 at 11 a.m. If there are bids  
14 received that are qualified bids as determined under the  
15 bidding procedures order, there would be an auction held on  
16 December 11th, 2008 and the sale hearing would be at the next  
17 omnibus which is schedule to be December 17th, 2008 at 10 a.m.

18 The terms of the motion describe in detail the  
19 termination rights that give rise to expense reimbursements and  
20 the limitations regarding bid protections. I would note, Your  
21 Honor, that there was another sentence added to paragraph 8 of  
22 the bid protection order, which I think has been provided to  
23 the Court, but I just want to read it into the record. At the  
24 end of paragraph 8, the following sentence has been added:  
25 "Notwithstanding any of the language in this order, the selling

1 debtor entities and the nondebtor sellers shall be obligated to  
2 pay the bid protection only if the buyers are not in material  
3 breach of the agreement." In the order we'll hand up to Your  
4 Honor, that has been added after discussions among the parties  
5 that are working on this transaction.

6 I don't know if Your Honor has specific questions  
7 about the bidding nature of the bidding order which -- it's  
8 fairly similar to what we've used in the past.

9 THE COURT: I didn't have any issues with the bidding  
10 procedures. I wanted to spell out a little more clearly in the  
11 order that any payment of the bid protection shall be allocated  
12 among the sellers in proportion to their allocable share of the  
13 purchase price so that there's no doubt that the debtors  
14 wouldn't be stuck with more than their proportionate share.

15 And then, at least as I read it, unless you sell  
16 these assets down the road within the time prescribed in the  
17 agreement, if I simply disapprove the sale, again, thinking of  
18 the committees' reservation, it didn't seem to me that the  
19 breakup fee was triggered. It wasn't clear whether the expense  
20 reimbursement was triggered or not. I think it may not be.  
21 But given the allocation language, I think it's much less of an  
22 issue because the amount that the debtors would have to pay of  
23 the expense reimbursement would be very small.

24 So, with that change, I'm prepared to approve it.

25 MR. BUTLER: Thank you, Your Honor. Your Honor,



1 those were all the matters on the agenda for today. We'll get  
2 back to the business of sorting out the matters on the other  
3 two motions and we'll be back before Your Honor on Monday.

4 THE COURT: Okay. Thank you.

5 MR. BUTLER: Thank you very much.

6 (Whereupon these proceedings were concluded at 11:14 a.m.)  
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Motion of Official committee of unsecured creditors to retain Moelis & Company as co-investment banker nunc pro tunc to July 1st, 2008 approved	12	15
Debtors' thirty-first omnibus claims objection granted	14	6
Debtors' exhaust business sale motion approved subject to modification of the Court as spelled out on the record	16	24

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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Date: November 26, 2008